

**THE INDIANA CIVIL RIGHTS COMMISSION
311 West Washington Street
Indianapolis, Indiana 46204**

**STATE OF INDIANA)
) SS
COUNTY OF MARION)**

**NANCY MARIE DIECKMANN,
Complainant,**

**DOCKET NO. 06982
EEOC NO. TINS-1438**

v.

**PRINCETON INDUSTRIES CORP.,
Respondent.**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On August 28, 1980, Kenneth W. Maher, Hearing Officer in the above cause, entered his recommendation neither party has filed objections that recommendation within the ten (10) day period prescribed by IC 4-22-1-12 and 910 IAC 1-12-1(B).

Being duly advised in the premises, the Commission hereby adopts as its final Findings of Fact, Conclusions of Law and Order those recommended in the Hearing Officer's Recommended Findings of Fact, Conclusions of Law, and Order, which is attached hereto and incorporated by reference herein.

Dated: September 19, 1980

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RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above captioned clam was the subject of an administrative hearing held on May 1 and 2, 1980, in Evansville, Indiana before Hearing Officer Kenneth W. Maher on behalf of the Indiana Civil Rights Commission.

Complainant was present and represented by counsel, M.E. Tuke and Jay Rodia. Respondent was present in the person of David Barning, President of Princeton Industries Corporation and was represented by counsel, William E. Statham.

Having considered the evidence presented at hearing the stipulations of the parties, the arguments and pleadings of counsel including the Proposed Recommended Findings of Fact, Conclusions of Law and Order and Briefs submitted by both parties and being duly advised in the premises, the Hearing Officer hereby enters the following Recommended Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Complainant Nancy Marie Dieckmann (hereinafter "Dieckmann") is a female citizen of the State of Indiana.
2. Dieckmann is a Caucasian.
3. Princeton Industries Corp. *hereinafter "PIC") is a corporation employing six (6) or more persons in the State of Indiana and manufactures a variety of goods for wholesale distribution.
4. PIC was founded by David Barning, (hereinaft4r "Barning") Larry King, Dan Dayton, Bob Lawson, Jon Padfield and Gary Rudolph.
5. PIC commenced operations in July 1974 and at all times material to this case was a new business started up and being operated with very limited capital and with a substandard plant, facilities and machinery.
6. Dieckmann was employed by PIC between August 8, 1974, and February 25, 1975.
7. During the course of her employment, Dieckmann cohabitated with Dwight Greer (hereinafter "Greer"), whose race is black and to whom she is presently married.
8. During all time relevant to this action Barning was President of PIC.
9. Barning also served on the Board of Directors of PIC, which Board consisted of PIC's six founders/
10. From mid summer 1974 until December 1974 the supervisor of production or plant foreman for PIC was Bill Rogers (hereinafter, "Rogers").
11. In Decembe3r 1974, Elmer Ellerbrook (hereinafter "Ellerbrook") assumed the duties of Rogers in regard to production employees.
12. At the time PIC opened in August 1974, eight (8) women were employed to work on the production lines.
13. During the month of Decemb4r 1974 there was a lay-off at PIC in which Dieckmann and several other employees were laid off. Dieckmann and most of the other employees were recalled following this relatively short lay-off.

14. From August 1974 thru at least February 1975, there were two production lines at PIC. These two lines were in an open area of the plant and were not separated by any walls or partitions.

15. One of the production lines was a silkscreen line on which candles were made in the fall. Later apothecary jars were silk screened. The production workers who worked primarily on the silk screen line included Cappy or Lily Fitch (hereinafter "Fitch"), Sue Williams (hereinafter "Williams"), Roxanne Hayes (hereinafter "Hayes") and Sherry Campbell (hereinafter "Campbell") among others.

16. The other production lines were variously referred to as a cleaner, soap, or shampoo line on which bottles were filled with product. Dieckmann and Kathryn Dunn (hereinafter "Dunn") were the only workers who worked regularly and primarily on this line.

17. Ellerbrook terminated Dieckmann and Dunn on Tuesday evening, February 25, 1974, by telephoning each one after working hours.

18. Ellerbrook stated in his telephone calls that the reason for termination of Dieckmann and Dunn was absenteeism; he stated no other reason at that time.

19. Dieckmann filed her complaint with ICRC on May 23, 1975. Her complaint in essence alleged that her discharge was an unlawful discriminatory practice in that she was discharged because she was living with a black man.

20. Ellerbrook and Barning testified in sum that Dieckmann was terminated for absenteeism and causing dissension among the product workers.

21. PIC's witnesses testified that Dieckmann caused dissension by using vulgar language and discussing sex, by starting rumors, by glaring at other workers, and by alleging that other workers received favored treatment.

22. During January and February at 1975, there were between ten (10) and twelve (12) production workers employed at PIC.

23. The evidence indicated that the vast majority if not all, of the production workers on the two lines were female and that they conversed among themselves frequently, if not almost constantly, during work, break, and lunch times.

24. A frequent topic of conversation among these workers was sex.

25. Although there was some testimony to the effect that Dieckmann offended other workers by using vulgar language and discussing sex, in view of other testimony concerning the language and actions of the other workers, I find that Dieckmann's language and talk of sex was no more offensive than the language and actions of several other workers and few of the other workers were really offended by such talk.

26. Ellerbrook did testify, however, that Williams complained to him about Dieckmann discussing oral sex with her and that Williams was offended by that.

27. Barning would regularly go into the plant and would talk with the production employees.

28. Dieckman, Dunn and several other employees concluded from observations of Barning talking to Fitch that Barning and Fitch were having an affair. (the evidence indicates that this conclusion, although widely believed, was probably false).

29. Ellerbrook testified that Hayes and Campbell had told him that Dieckmann had started or was spreading the rumor that Fitch and Barning were having an affair.

30. Dieckmann felt that Fitch and others on the candle or silk screen line received favored treatment and she referred to that line as "the gravy line".

31. Fitch, Campbell, and Hayes all testified that Dieckmann would make them uncomfortable by staring or glaring at them.

32. According to Dieckmann's testimony, there was no question about the fact that there were personal problems between and some of the other workers. Dieckmann further acknowledged that some of the friction may have resulted from a comment she made to Hayes about Barning and Fitch and from her feeling that Fitch was being shown favoritism.

33. Dieckmann and Dunn were both off work one week with the flu. Each brought a doctor's statement when they returned to work.

34. On Monday, February 24, 1975, Dieckmann and Dunn were both absent from work again. Dieckmann submitted a doctor's statement when she returned.

35. On Tuesday, February 25, 1975, Ellerbrook called Dieckmann and Dunn into his office and talked to them about the dissension and bickering in the plant and their absenteeism on the same days.

36. When Dunn walked out of the office, Ellerbrook heard her say that she had "told that son of a bitch off". Ellerbrook decided he had not gotten through to Dunn.

37. In the evening of February 25, 1975, Ellerbrook was still working after the production workers had gone home, when Fitch came back into the plant and told him that she had just had a discussion with her husband and they felt she should resign from her employment.

38. Fitch said she could no longer stand the dissension in the plant and that she was concerned about the rumors about her and Barning. She indicated that she felt Dieckmann was the cause of these problems.

39. Ellerbrook asked her not to quit and said he would do what was necessary to correct the problem.

40. That evening, Ellerbrook met with Barning and told him that he had two employees whom he believed should be discharged, explaining what had occurred in the plant and naming Dieckmann and Dunn.

41. Barning told him that he (Ellerbrook) was in charge of production and that he should do whatever he needed to do to keep up production.

42. Following his conversation with Barning, Ellerbrook called Dieckmann and Dunn and told them that they were discharged. Although he told them the reason was absenteeism, it is clear from the fact that he was merely avoiding explaining the main reason as found below.

43. Testimony from former employees indicates that Barning used derogatory racial language occasionally in regard to Dieckmann and her relationship with Greer. Although Barning refuted this testimony, it is credible for the following reasons.

- 1) The testimony was derived from more than one source
- 2) The witnesses did not appear to be in collusion
- 3) The witnesses had no benefit to derive from their testimony.

44. The language used by Barning, however, fails to establish that Dieckmann was discharged because of her relationship with Greer, since the evidence establishes that it was actually Ellerbrook who made the decision to discharge Dieckmann and that he made the decision for another reason.

45. The evidence, taken as whole fails to establish that Ellerbrook discharged or was even prejudiced against Dieckmann because of her relationship with Greer. Although there was some testimony (refuted by Ellerbrook) that he also had used racially derogatory language, there was also evidence that he had stated that he did not care what color anyone was.

46. Ellerbrook decided to discharge Dieckmann because he was aware that there was considerable dissension among the workers and he perceived that Dieckmann was the cause, or at least that her discharge would help to solve the problem. He did not discharge her because of relationship with Greer. Basic facts supporting this finding include:

- a. The discharge occurred on the same day that Ellerbrook had talked to Dieckmann about dissension and Fitch had threatened to quit.
- b. Dunn, who was a Caucasian and had no relationship with a black man, was also discharged on the same day.
- c. The evidence clearly established that there was considerable dissension and that several employees, whether justified or not, had indicated to Ellerbrook that Dieckmann had, in various ways, caused or contributed to the dissension.

47. Because of the absence an unlawful discriminatory practice, Dieckmann has suffered no damages cognizable under IC 22-9-1.

48. Any Conclusion of Law which should have been deemed a Finding of Fact is hereby adopted as such.

CONCLUSIONS OF LAW

1. The complaint was filed in a timely fashion pursuant to IC 22-9-1-3(O).

2. The ICRC has jurisdiction over the subject matter and the parties, and has had such jurisdiction at all times relevant to this complaint.
3. PIC is a “person” as that term is defined in IC 22-9-1-3(a).
4. PIC is an “employer” as that term is defined in IC 22-9-1-3(h).
5. Dieckmann failed to prove that PIC committed an unlawful “discriminatory practice” as that term is defined in IC 22-9-1-3(1) when she failed to prove her allegation that her discharge was because she was living with a black man.
6. PIC did not commit a “discriminatory practice” when it discharged Dieckmann for reasons other than those prohibited by the Indiana Civil Rights Law. IC 22-9-1-3(1).
7. Any Finding of Fact which should have been deemed a Conclusion of Law is hereby adopted as such.

ORDER

The complaint of Complainant, Nancy Dieckmann (Greer) shall be dismissed for reasons aforestated.

Dated: August 28, 1980